

MILLER'S CUSTOM WORK, INC.

IBLA 85-501

Decided November 17, 1986

Appeal from a decision of the Eagle Lake Resource Area Manager, Bureau of Land Management, California, establishing rental charges for communication site right-of-way S 3722.

Affirmed.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-Way-- Rights-of-Way: Generally

An appraisal of fair market value for a communication site right-of-way will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charges are excessive. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal.

APPEARANCES: Robert J. Miller, Vice President, Miller's Custom Work, Inc., Susanville, California.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Miller's Custom Work, Inc., has appealed the March 11, 1985, decision of the Eagle Lake Resource Area Manager, Bureau of Land Management (BLM), California, establishing \$2,000 as the fair market value for 1 year's rental of communication site right-of-way S 3722, located on Shaffer Mountain in sec. 24, T. 30 N., R. 14 E., Mount Diablo Meridian.

The right-of-way was originally granted to appellant on June 19, 1970, pursuant to the Act of March 4, 1911, as amended, 43 U.S.C. § 961 (1976) (repealed by section 706(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793, subject to valid existing rights). BLM's decision granting that right-of-way specified an initial 10-year grant

period, with an option to renew in accordance with stated stipulations, 1/ with a rental fee of \$300 annually. BLM notified appellant by letter dated June 10, 1976, that the subject right-of-way had been reappraised at \$135 annually.

By decision dated December 13, 1982, BLM renewed appellant's right-of-way grant retroactively from June 19, 1980, for an additional 10-year period, under the provisions of Title V of FLPMA, 43 U.S.C. §§ 1761-1771 (1982). The decision provided that rental for the first 5 years of the grant was to be \$135, "subject to a pending formal appraisal."

BLM informed appellant by a decision dated March 11, 1985, that on June 13, 1984, BLM had approved a formal appraisal establishing \$2,000 as the fair market value for 1 year's rental of the right-of-way, beginning with the period from June 19, 1985, through June 18, 1986. Appellant seeks review of that decision. It criticizes the increased rental fee as unreasonable, stating the \$2,000-per year fee "seems extremely high rent for use of less than 100 sq. feet of a mountain top." Appellant further explains its reasons for requesting a "reconsideration" of the rental increase:

In addition, we lease space to two of Lassen County's departments and the only community hospital which serves this large area. By increasing our rate, your agency will force us to pass this increase along to the County departments causing hardship in an already tightened budget within which they now exist.

It is our understanding that the local Honey Lake Community TV association and Susanville Cablevision will also be affected; and, the increase passed to their local consumers. Lassen County is an economically depressed area with little industry, and the population cannot endure further increases such as those which will result from the TV and Cablevision companies. Our own usage of this facility is rather limited, due to the seasonal nature of construction in Northeastern California - so we are paying an annual fee for approximately six months of utilization.

[1] Under section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1982), the holder of a right-of-way is required to pay annual advance rental equal to the fair market rental value of the right-of-way. The general standard for reviewing rights-of-way appraisals is to uphold the appraisal if the appellant fails to show error in the appraisal methods used by BLM or fails to show by convincing evidence that the charges are excessive. Jancur, Inc., 93 IBLA 310 (1986); Horizon Communications, 91 IBLA 399 (1986). In the

1/ The original right-of-way grant stipulated that at any time after an initial 5-year period, appellant might be required to remove its communication equipment to a common vault maintained by either BLM or the California Division of Forestry. However, the right-of-way was extendable, at appellant's option, for an additional 10-year period if the conditions for removal to a common vault could not be met.

absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal. Jancur, Inc., 93 IBLA at 312; see Dwight L. Zundel, 55 IBLA 218, 222 (1981).

The appraisal report uses the comparable lease method of appraisal to determine the fair market value, which is the preferred method for appraising the fair market value of communication sites where there is sufficient comparable rental data. Jancur, Inc., 93 IBLA at 312; Southern California Gas Co., 81 IBLA 358 (1984); Mountain States Telephone & Telegraph Co., 79 IBLA 5 (1984). The BLM appraiser considered a number of leases in the vicinity of appellant's right-of-way communication site. After consideration of the differences and similarities between those leases and appellant's right-of-way, the fair market annual rental value for appellant's right-of-way was determined. Appellant has shown no error in the appraisal methods used by BLM nor has it provided another appraisal or any evidence that the charges are excessive, particularly in light of the rental rates for other leases in the area.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

